

## **COMPATIBILITY DETERMINATION**

**USE:** Commercial Guiding of People Engaged in Wildlife- and Nature-Dependent Uses

**REFUGE NAME:** Ohio River Islands National Wildlife Refuge

### **ESTABLISHING AUTHORITIES:**

1. The Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j; 70 Stat. 1119)

### **PURPOSE(S) FOR WHICH ESTABLISHED:**

1. "...for the development, advancement, management, conservation and protection of fish and wildlife resources..." 16 U.S.C. 742f(a)(4) "...for the benefit of the United States Fish and Wildlife Service, in performing its activities and services. Such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude..." 16 U.S.C. 460k-1 742f(b)(1) (Fish and Wildlife Act of 1956)

### **MISSION OF THE NATIONAL WILDLIFE REFUGE SYSTEM:**

"To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans." (16 U.S.C. 668dd-668ee) (National Wildlife Refuge System Administration Act of 1966)

### **DESCRIPTION OF THE USE:**

#### **(a) What is the use? Is the use a priority use?**

This use is commercially guided public use education activities, tours, and programs (wildlife observation, photography, environmental education and interpretation) that are offered to the public for a fee and are conducted on Ohio River Islands National Wildlife Refuge (NWR, refuge) property. Activities provide recreational and educational opportunities for the paying public who desire a successful, quality experience, but who may lack the necessary equipment, skills, or knowledge to observe wildlife or otherwise experience the diverse habitats of the refuge. The refuge refers to all tour operations where a fee is charged to the participant as commercially guided wildlife and wildlands tours and activities which may include but are not limited to the following: canoe/kayak tours, bird watching excursions, wildlife viewing or photography trips, nature programs and environmental education field outings. Commercial guiding will be administered through the Special Use Permit (SUP) process.

Commercial guiding is not a priority public use of the National Wildlife Refuge System (Refuge System) under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997.

Commercial guiding can contribute to the fulfillment of refuge purposes and to the National Wildlife Refuge System Mission by facilitating priority and/or compatible public uses.

**(b) Where would the use be conducted?**

These activities take place on all units of the refuge that are open to individual public use. The same areas currently used by non-guided visitors for wildlife observation, wildlife photography, hunting, fishing, and environmental education/interpretation would likely be used for commercially guided activities. Although the entire refuge is currently open for most activities, if user conflicts arise in the future, commercial activities could be restricted to certain areas or times to minimize such conflicts. Access will be handled on a case by case basis within the vicinity of sensitive bird areas such as nesting sites. Tours tend to utilize refuge islands and mainland trails, a canoe launch, parking areas, and public use facilities.

**(c) When would the use be conducted?**

These activities could take place year-round, subject to the regulations or laws governing the individual public use, but would primarily occur during spring and summer. Activities would take place during daylight hours only unless noted otherwise on the SUP.

**(d) How would the use be conducted?**

These activities will be conducted in accordance with commercial guide use stipulations (see page 7 of this document). These conditions were developed to ensure consistency throughout the refuge; provide a safe, quality experience; protect resources; and to ensure compliance with pertinent Refuge System regulations and policies. The special use stipulations will address the number of permits to be issued, guide qualifications, permit cost, and selection methods. Commercial Guide Use conditions will take into account the distribution of guides and public opportunity, and address sensitive wildlife areas or other considerations.

SUP applications would be reviewed only when the complete application package has been received. A complete application package includes a completed FWS Form 3-1383-G, which contains the purpose of the permit, permittee name and address, period of permit validity, and detailed description of the area to be used with a map attached (if possible). If approved, permits would be mailed within 2 weeks of the request. If not approved, the entire application package (including the check) will be returned via mail. Application packages containing false statements or fraudulent or misleading information will be denied and the application fee will be forfeited.

All SUP activities are regulated by provisions listed in 50 CFR, subpart D - Permits, 15.41 - 45. The permittee would be required to comply with all Department of the Interior, U. S. Fish and Wildlife Service, and Federal, State, and local laws in the conduct of their business. Because this is an economic use of the refuge, it is also subject to other applicable laws and regulations (see 50 C.F.R. 29.1).

The number of permittees for a particular activity is not presently limited by the refuge; however, restrictions may be placed on the quantity, time, and location of activities as deemed appropriate to

sustain the resource and the quality of experience for other refuge visitors. If we determine that limits on the number of permittees is necessary, we would follow the procedures outlined in the Service’s Refuge Manual (5 RM 17.11) and other applicable laws and regulations (see also 50 C.F.R. 29.1). Whenever possible, these restrictions would be clearly explained on the permit; however, the refuge reserves the right to enforce further restrictions or to change the restrictions by amending the permit at any time during the permit period when deemed appropriate for the protection of the resource and the quality of experience for the general public. Visitors participating in approved public uses are allowed off trail; however, off-trail use is limited to pedestrian access only (e.g., walking, snowshoeing).

The permittee must comply with the refuge regulations and SUP conditions listed under “Stipulations Necessary to Ensure Compatibility” later in this document unless an exception is allowed in the SUP.

**(e) Why is the use being proposed?**

Because commercially guided tours are considered an economic use, per Federal law (see 16 U.S.C. 715s) and Service regulations (50 C.F.R. 29.1), we may only allow economic uses of a refuge natural resource when the use is determined to be compatible with the purpose(s) for which the refuge was established and consistent with refuge objectives and applicable laws and policies. We would allow commercial guiding to: (1) better protect refuge lands and waters; and, (2) to facilitate public participation in wildlife-dependent priority public uses, because many may not have the knowledge, skills, confidence, or equipment to come to Ohio River Islands NWR and engage in these activities on their own. Commercial guides would help facilitate a safe and high-quality priority public use experience, and facilitate observation and appreciation by participants and observers of the refuge’s wildlife and habitats.

**AVAILABILITY OF RESOURCES:**

Adequate refuge personnel and base operational funds are available to manage guided experiences at existing and projected levels. Administrative staff time would primarily involve issuing and renewing SUPs each year, ensuring licenses and certifications are current, collecting client use-day fees, and reporting data on an annual basis. Fieldwork associated with administering the program primarily involves monitoring the permittees’ compliance with permit terms.

Annual costs associated with the administration of commercial guiding on the refuge are estimated below:

Park Ranger (GS11) (review applications, coordinate with guides), 3 days/yr: \$ 1,008

Law Enforcement Officer (GS9) (checking activities for permit compliance), 5 days/yr: \$ 1,200

**Total: \$ 2,208**

Fees would be assessed with each permit, and shall be set, when possible, to recover the costs of administering specialized uses including guiding (Refuge Manual 17.8, 17.9).

### **ANTICIPATED IMPACTS OF THE USE:**

Commercial guiding of priority public uses and other uses that facilitate priority public uses can have positive or negative impacts to the refuge's wildlife and habitats.

The positive impacts of these uses include providing visitors with a better appreciation and more complete understanding of the wildlife and habitats associated with the refuge. This can translate into more widespread and stronger support for the refuge, the National Wildlife Refuge System and the Service, as well as wildlife conservation in general.

The negative effects of these uses include impacts to plants, soils, hydrology, and wildlife from visitors participating in the six priority public uses, on the refuge. The impacts associated with these activities are discussed in detail below.

#### **Vegetation Impacts:**

Pedestrian travel can have indirect impacts to plants by compacting soils and diminishing soil porosity, aeration, and nutrient availability that affect plant growth and survival (Kuss 1986). Plant collecting is also prohibited. Designated routes for pedestrian travel consist of existing trails, many with hardened surfaces, or are existing trails that have been used for many years. Designated routes do not have any known occurrences of rare plant species on their surface that would be impacted by this use. Continuing pedestrian travel on these routes is not likely to cause any significant impacts to plants or plant communities.

Off-trail use can result in direct impacts to plants caused by the physical trampling from visitors traveling through the area. Most areas of ORINWR are somewhat self-limiting as areas off the trails tend to be thick with green briar, stinging nettle and poison ivy. If excessive off-trail impacts occur, the refuge can restrict commercial activities to certain areas or times to minimize impacts.

Limits placed on the number and size of tours as well as launch times and locations will be established and/or adjusted in response to evidence of habitat degradation. However, under current levels of use, impacts to vegetation are not likely to be significant.

People can be vectors for invasive plants when seeds or other propagules are moved from one area to another. The threat of invasive plant establishment would always be an issue requiring annual monitoring, and when necessary, treatment. Staff would work to educate the visiting public to reduce introductions and would also monitor and control invasive species. Kayaking/canoeing is not expected to have adverse impacts on refuge vegetation.

There may be impacts to beaches and vegetation on islands from kayaks/canoes landing or tying off to island vegetation. These impacts are expected to be minor and insignificant.

### **Soil Impacts:**

Soils can be compacted and eroded as a result of continued use of pedestrian routes (Cole and Landres 1995). It is anticipated that some soil erosion would occur as a result of continuing pedestrian access on designated routes. There is also a concern for habitat degradation through trampling at canoe launch sites and trailheads. Limits placed on the number and size of tours as well as launch times and locations will be established and/or adjusted in response to evidence of habitat degradation. However, under current levels of use, impacts to soils (erosion, compaction) are not likely to be significant.

### **Hydrologic Impacts:**

Roads and trails can affect the hydrology of an area, primarily through alteration of drainage patterns. It is anticipated that existing roads and trails would continue to influence hydrology regardless of pedestrian travel. Routine maintenance would be required to create adequate and proper drainage to avoid hydrologic impacts.

Erosion is a problem on some of the islands. However, most of the erosion impacting the shorelines of islands is due to the modern day navigation system of the Ohio River. Trail erosion is uncommon on the refuge. Impacts to wet areas can occur when bridging is inadequate and visitors widen or go off the trail to avoid wet spots. Properly sited, designed, and maintained trails minimize this impact. Based on the current level of use, pedestrian travel is not likely to significantly increase erosion, incision, or stream alteration. Therefore, no significant hydrologic impacts are anticipated from this use.

Negative impacts on water quality occur from motorboat and other pollutants, human waste, and litter. However, the waters around the islands of the Ohio River are navigable waters outside the jurisdiction of the refuge or Service. The levels of pollutants from boat fuel and impacts on local aquatic systems are unknown. We do not anticipate any adverse impacts from the uses proposed (i.e., birding or canoe/kayak tours) on the hydrology of the Ohio River.

### **Wildlife Impacts:**

Disturbances vary with the wildlife species involved and the type, level, frequency, duration and the time of year such activities occur. The responses of wildlife to human activities include: avoidance or departure from the site ( Burger 1981, Kaiser and Fritzell 1984, Korschen et al. 1985, Henson and Grant 1991, Kahl 1991, Klein 1993, Whittaker and Knight 1998), use of sub-optimal habitat (Williams and Forbes 1980), altered behavior or habituation to human disturbance (Burger 1981, Korschen et al. 1985, Morton et al. 1989, Ward and Stehn 1989, Havera et al. 1992, Klein 1993), attraction (Whittaker and Knight 1998), and an increase in energy expenditure (Morton et al. 1989, Belanger and Bedard 1990). Knight and Cole (1991) suggest recreational activities occurring simultaneously may have a combined negative impact on wildlife. Hammitt and Cole (1998) conclude that the frequent presence of humans in wildland areas can dramatically change the normal behavior of wildlife mostly through “unintentional harassment.” These responses can have negative impacts to wildlife such as mammals becoming habituated to humans making them easier targets for hunters. Human-induced avoidance by wildlife can prevent animals from using

otherwise suitable habitat. Seasonal sensitivities can compound the effect of disturbance on wildlife. Both bird and mammal species which are present and active during the winter have the added environmental stressors of severe weather and food shortages, and can be more negatively affected than they would from the same level of disturbance during the warmer seasons (Hammit and Cole 1998). However, most wildlife observation tours are likely to occur in spring and summer, when weather and food stressors are comparatively minor.

Depending on the time of year, increased use could cause disturbance to land birds, waterfowl, water birds, bald eagles, and other wildlife. While field trip routes and observation sites are located in areas open to the general public, disturbance caused by group tours could be more intense because the number of people may be greater than normally occurs during general public activities. This disturbance may displace individual animals to adjacent areas of the refuge. However, this disturbance is minor due to the short-term nature and infrequency of the expected use. Disturbance levels during critical feeding, resting and breeding periods will be managed by controlling areas and seasons of use.

### **Summary of Impacts:**

Opening the refuge to commercial guiding could increase the number of visitors to the refuge and increase the number of larger groups (4 or more people) visiting the refuge. Based on observations, few known requests to commercially guide on the refuge, and knowledge of the areas involved, there is no evidence that cumulatively, commercial guiding would have a noticeable increase in adverse effects on the refuge resources. Commercial guides and their clients would be required to comply with all of the existing stipulations for priority public uses non-priority public uses specified. In addition, commercial guides would be required to comply with additional stipulations below and would be routinely checked by the refuge law enforcement officer for compliance with regulations and permit conditions. Permit conditions and stipulations noted below are designed to minimize potential impacts. Although a substantial increase in the cumulative impacts from public use is not expected in the near term, refuge staff would monitor impacts of this use and respond, if necessary, to conserve the existing high quality wildlife resources.

Guided tour activities may also conflict with other refuge users. For example, commercial tours will most likely use the same areas as the independent wildlife viewer, kayakers and canoeists, and hunters and anglers during open seasons. Unregulated or inadequately regulated commercial guiding operations may adversely affect the safety of refuge users, the quality of experience, and the equity of opportunity. Stipulations proposed were developed to mitigate these concerns by coordinating schedules and implementing volume and space restraints for commercial operators. Guide operations may increase use of some refuge facilities, such as boat launch ramps, but, if regulated, this increase would not be significant compared to overall use.

**PUBLIC REVIEW AND COMMENT:**

This compatibility determination will be posted for 14 days at the Refuge as well as on the Refuge website and Facebook page. Concerns expressed during the public comment period will be addressed through the stipulations necessary to ensure compatibility as well as the conditions of the special use permit.

**DETERMINATION (check one below):**

\_\_\_\_\_ This use is compatible

\_\_\_\_\_ This use is not compatible

**STIPULATIONS NECESSARY TO ENSURE COMPATIBILITY:**

The Refuge Manager may, as necessary, establish a maximum number of guides that will be allowed to operate within the refuge. Limitations in refuge staff availability to process permit requests may also limit the issuance of permits. The number of tours may also be limited as necessary to reduce unforeseen conflict between user groups or disturbance to wildlife and habitats.

The refuge will charge a non-refundable fee to cover the administrative costs to process the SUP.

The following stipulations apply to SUPs issued for commercially guided recreational tours. Continuing law enforcement and administrative monitoring of permittees would be carried out to ensure compliance with the following conditions that are incorporated into all permits in order to minimize impacts on refuge lands and resources.

- Permittee(s), designated representatives, and associates will comply with all the refuge regulations and conditions of the Special Use Permit as provided by the refuge manager.
- Permittee agrees to hold the U.S. Government harmless from liability for any accident/injury to their clients or employees resulting from their activities being authorized by this permit. The permittee must provide adequate and appropriate liability insurance (a Certificate of Insurance with adequate Comprehensive General Liability coverage, the minimum limit of liability being \$300,000 per occurrence). The insurance certificate must name the U. S. Fish and Wildlife Service as additional insured, as well as specify that the service/activity authorized by the permit is covered by the policy and must also provide a telephone number for verification purposes.
- The permittee would not advertise on refuge property; leaflets may not be distributed via the Refuge Visitor Center, etc. Leaflets may be distributed only during approved programs covered by the SUP and only to those participants registered for that program.

- The permittee must provide a copy of the appropriate documentation of current Red Cross First Aid and CPR certification for all guides.
- A copy of a valid SUP must be available for inspection by any law enforcement officer or refuge staff member, on request, whenever an activity authorized by the permit is occurring. Storing in the glove box of the vehicle may be acceptable for birding tours. Permits must be with the permittee in the case of canoe/kayak tours. However, all guides must be knowledgeable about the permit and its conditions.
- The permittee will be responsible for all infractions of refuge special regulations and Code of Federal Regulations Title 50 Subparts C, pertaining to National Wildlife Refuges.
- The refuge reserves the right to charge/change fees, regulations and/or restrictions or terminate the permit during the effective period following consultation with the permittee.
- The permittee will disclose, during all trips, tours, activities that this area is part of the National Wildlife Refuge System administered by the U.S. Fish and Wildlife Service at Ohio River Islands NWR. Included in this disclosure will be a brief description of the refuge and its specific mission.
- The permittee will follow Leave No Trace principles at all times.
- Refuge staff has the right to accompany any tour, program, or activity, with proper notice, as a non-paying observer.
- Permittees may be assisted by any number of individuals. However, the refuge reserves the right to limit commercial guides and clients as needed. Assistants must be named/authorized on the permit issued and possess the applicable state licenses and/or registration to perform the duties conducted.
- Special use permits are non-transferable.
- The permittee will provide the refuge with a proposed schedule, including times, dates and locations, of all programs/tours/activities at least 30 days prior to conducting those activities on the refuge.
- The permittee is responsible for accurate record keeping and will provide the issuing refuge office an annual summary of activity by August 1<sup>st</sup> with estimates through September 30<sup>th</sup> of each year; the following information will be included:
  - a. Fee schedule for the year (charge per individual)
  - b. Number of guided tours/activities/programs conducted on the refuge
  - c. Number of individuals that participated in tours/activities/programs
  - d. Date of each trip
  - e. Location of each trip, or general area of activity

- f. Individual names and description of duties for all additional staff who assisted with a trip on the refuge
- All boats are to be equipped and operated in accordance with state and U.S. Coast Guard boating regulations including possessing a current state registration.
  - The Special Use Permit and the privileges granted herein may be revoked by the issuing refuge office at any time for failure to comply with the permit conditions or other federal or state law.
  - No refund would be made to the permittee, regardless of the reason for revocation/cancellation of a permit.
  - Tours on the Buckley Mainland and Middle Island tracts will stay on refuge trails only.
  - Canoe/kayak tour permits: Guides would be required to be knowledgeable in the identification and threats of aquatic invasive species. They would be required to inspect boats, trailers, and all associated boating equipment for the presence of plant material. All plant material must be removed and securely placed in zip lock bags prior to launching the boat or using associated equipment in refuge waters.
  - For those businesses having had a previous year SUP, a current year SUP would not be issued until an accounting of tours/activities conducted under the old SUP has been received by the refuge office.
  - SUPs are issued on a year-to-year basis and are not automatically re-issued on consecutive years.
  - Vehicle(s) would be used only on designated roadways and in parking areas.
  - Individuals guiding bird watching clients or tours may not use electronic calls without the express written permission of the refuge manager.

**JUSTIFICATION:**

We have determined that allowing commercial guiding on Ohio River Islands National Wildlife Refuge would not materially interfere with, or detract from, the mission of the National Wildlife Refuge System or the purposes for which the refuge was established. In fact, based on the analysis presented above, we have determined that allowing this use will contribute to the mission of the National Wildlife Refuge System or the purposes for which the refuge was established as follows. First, refuge visitors enjoy participating in wildlife-dependent priority public uses, but many may not have the knowledge, skills, or equipment to come to Ohio River Islands NWR and engage in these activities. Commercial guides may help facilitate a safe and high-quality priority public use experience, and facilitate observation and appreciation by participants and observers of the refuge’s wildlife, habitats, and conservation programs. Second, by allowing this activity, refuge staff hopes

more visitors will be exposed to the refuge and the Refuge System, and this exposure may lead to a better understanding of the importance of the Refuge System to wildlife conservation and to the American people. These users may take the time to learn more about the refuge and become supporters of the National Wildlife Refuge System. In addition, this use also helps fulfill Goal 3 of the CCP, “Promote and support priority compatible fish and wildlife-dependent uses while maintaining the long-term health of the ecosystem and Service trust resources.”

**NEPA Compliance for Refuge Use Decision (check one below)**

- Categorical Exclusion without Environmental Assessment
- Categorical Exclusion and Environmental Assessment
- Environmental Assessment and Record of Decision
- Environmental Assessment and Finding of No Significant Impact

Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. Commercial wildlife and wildlands guiding can be categorically excluded from the EA process under Departmental Manual 516 DM6 Appendix 1.4 Categorical Exclusions Permit and Regulatory Functions section C (3), as outlined below, when the guiding is educational in nature.

**C. Permit and Regulatory Functions**

(3) The issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental effect.

**SIGNATURE:** Refuge Manager: \_\_\_\_\_ Date: \_\_\_\_\_

**CONCURRENCE:** Regional Chief: \_\_\_\_\_ Date: \_\_\_\_\_

**MANDATORY 10- or 15-YEAR REEVALUATION DATE:** July 29, 2023

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